

Remarks/Arguments

Applicants have amended calims 27, 37-39, 45-50, 52-59, 61, and 65-66 to correct the improper dependencies.

Examiner has identified three distinct species:

Species A including claims 1-10, 26, 28-36, 40-44, and 46 paragraph 26;

Species B including claims 11-14, 51, and 60 paragraph 29; and

Species C including claims 15-25 paragraph 31.

In addition, Examiner has identified two distinct inventions:

Group I, drawn to a method of manufacturing, classified in class 445, subclass 50; and

Group II, drawn to a device, classified in class 313, subclass 311.

Applicants respectfully traverse Examiner's restriction. Applicants believe that the restriction requirement is improper. Applicants assert that claims to be restricted to different species must be mutually exclusive, i.e. they must have mutually exclusive characteristics. Examiner must provide and in this restriction has provided no reasoned explanation how species A-C describe species that are mutually exclusive and is therefore improper.

In addition, Examiner's restriction requirement has not established that an undue burden would be required if the restriction requirement either was not issued or if issued with fewer species. More particularly, MPEP §803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

In the present application, no undue burden has been established if each of the claims were examined together. For example, Examiner has neither indicated nor has given any arguments as to why prosecution of claims to species A and B, or claims to species A and C presents any serious burden as required by MPEP §803.

The present restriction requirement not only improperly shifts the Examiner's burden to the Applicants, but also subjects the Applicants to the added financial burden of prosecuting different claims in an unreasonable number of separate proceedings. Applicants respectfully request that Examiner reconsider the current restriction and remove this restriction requirement.


Thus, Applicants hereby provisionally elect with traverse Species A, Group I covering claims 1, 3-10, 26, 28-36, 40, and 44. Applicants make this election based on the understanding that Applicants are not prejudiced against filing one or more divisional, continuation, and/or continuation-in-part applications that cover the non-elected claims.

The examiner has required restriction between product and process claims. Where Applicants elect claims drawn to the method, and the method claims are subsequently found allowable, withdrawn product claims that depend from or otherwise include all the limitations of the allowable process claims will be rejoined in accordance with the provisions of MPEP §821.04. Product claims that depend from or otherwise include all the limitations of the patentable process will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.

Applicants note that upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species.

Hewlett-Packard Company
1000 NE Circle Blvd. m/s 422B
Corvallis, OR 97330
(541) 715-1694

Respectfully submitted,
David Champion et al.

By: 
Donald J. Coleman
Reg. No. 50,406
Attorney for Applicant

Date: 6-Mar-06